



Agricultural Marketing Service

7 CFR Part 922

[Doc. No. AMS-SC-21-0061]

Washington Apricots; Termination of Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; termination of order.

SUMMARY: This final rule terminates Federal Marketing Order No. 922 (the Order) regulating the handling of apricots grown in designated counties in Washington, and the rules and regulations issued thereunder. This final rule also removes the Order from the Code of Federal Regulations. The United States Department of Agriculture (USDA) has determined the Order is no longer necessary to maintain orderly marketing conditions.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Joshua R. Wilde, Marketing Specialist, or Gary Olson, Chief, Western Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724 or Email: Joshua.R.Wilde@usda.gov or GaryD.Olson@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-8085 or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, terminates regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Order No. 922, as amended (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington. Part 922

is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Washington Apricot Marketing Committee (Committee) locally administers the Order and is comprised of producers and handlers operating within the production area.

The Agricultural Marketing Service (AMS) is issuing this final rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

In addition, this final rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined this final rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under 7 U.S.C. § 608c(15)(A) of the Act, any handler subject to a marketing order may file with USDA a petition stating that the marketing

order, any provision of the marketing order, or any obligation imposed in connection with the marketing order is not in accordance with law and request a modification of the marketing order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule terminates the Order regulating the handling of apricots grown in designated counties in Washington and removes the Order from the Code of Federal Regulations. Following its meeting on May 11, 2021, the Committee unanimously recommended this action after determining the Order is no longer necessary to maintain orderly marketing conditions. On April 13, 2022, AMS published a final rule which indefinitely suspended reporting and assessment collection requirements under the Order, effective May 13, 2022, while it continued to consider the Committee's recommendation and information submitted (87 FR 21741).

Section 922.64(b) of the Order provides that USDA shall terminate or suspend any or all provisions of the Order when a finding is made that the Order does not tend to effectuate the declared policy of the Act. In addition, section 608c(16)(A) of the Act provides that USDA terminate or suspend the operation of any order whenever the Order or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act. After reviewing the Committee's recommendation, years without apricot marketing program activity, the decline in apricot production, and the indefinite suspension of reporting and assessment collection requirements, USDA determined that the Order no longer tends to effectuate the declared policy of the Act.

The Order has been in effect since 1957 and has provided the Washington apricot industry with authority for grade, size, quality, maturity, pack, and container regulations, as well as authority for mandatory product inspection.

The Committee meets regularly to consider recommendations for modification, suspension, or termination of the Order's regulatory requirements. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS reviews Committee recommendations, including information provided by the Committee and from other available sources, and determines whether modification, suspension, or termination would tend to effectuate the declared policy of the Act.

In 2006, the Committee unanimously recommended USDA suspend container regulations after determining they were no longer necessary to ensure orderly marketing and that suspension would provide greater flexibility to handlers for packing and shipping apricots. Following the Committee's recommendation, AMS suspended container regulations for apricots (9 CFR § 922.306) for the 2006 shipping season (71 FR 16979), and subsequently extended that suspension indefinitely in 2007 (72 FR 16263).

In 2013, the Committee unanimously recommended USDA suspend handling regulations after determining the cost of complying with the Order's handling and inspection requirements outweighed its benefits to both producers and handlers of apricots. Based on the Committee's recommendation, AMS issued an interim rule indefinitely suspending the handling regulations for apricots (§§ 922.111 and 922.321) on October 23, 2013 (78 FR 62963). A final rule affirming the indefinite suspension was published in the **Federal Register** on March 20, 2014 (79 FR 15539).

Following these regulatory suspensions, the Committee continued to levy assessments to maintain its functionality. The Committee believed that it should continue to fund its full operational capability, collect industry statistics on an ongoing basis, and maintain the program in the event market conditions warranted regulation.

On May 11, 2021, the Committee met and discussed current market dynamics, budget, and assessments, and deliberated the continuance of the Order. During the meeting, the Committee discussed that the volume of apricots produced in Washington has declined over the years, and in 2020, the industry experienced a significant drop in crop produced from the prior year's production. Management and administrative costs to maintain the Order have also increased.

The Committee also discussed keeping the Order in place. To achieve that, the Order would require an assessment rate increase of approximately 300 percent, from \$2.86 to \$13.30 per ton. The Committee determined that the decrease in the 2020 crop suggests an overall decline in apricot production, and an assessment rate increase of 300 percent would not benefit apricot producers and handlers. The industry has functioned without container and handling regulations for a combined period of more than 14 years. The Committee believes the suspension of container and handling requirements has not adversely affected the marketing of Washington apricots and terminating the Order would not negatively impact the industry. The Committee ultimately concluded that the Order is no longer necessary to maintain orderly marketing conditions and voted unanimously to terminate the Order.

On July 7, 2021, the Committee formally recommended USDA terminate the Order. In preparing to terminate the Order, the Committee recommended USDA suspend the collection of assessments and reporting requirements. The Committee also recommended a budget of expenditures of \$5,508 for the period beginning April 1, 2021 and ending with the termination of the Order.

Following the Committee's recommendation, USDA indefinitely suspended the remaining reporting and assessment collection requirements under the Order while it considered termination. AMS published a proposed rule to indefinitely suspend reporting and assessment collection requirements (§ 922.235) in the **Federal Register** on

November 23, 2021 (86 FR 66462). AMS received one comment that did not address the merits of the rule. Accordingly, no changes were made to the rule as proposed and the final rule was published on April 13, 2022 (87 FR 21741).

The suspension of regulations, reporting requirements, and assessment collections continued while USDA evaluated the Committee's recommendation for terminating the Order. After reviewing the Committee's recommendation, years without marketing program activity, the decline in apricot production, and the decision to indefinitely suspend reporting and assessment collection requirements, USDA determined that the Order no longer effectuates the declared policy of the Act.

This final rule terminates the Order and the rules and regulations issued thereunder.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 315 growers of Washington apricots and approximately 8 apricot handlers in the production area subject to regulation under the Order. Small agricultural service firms (postharvest crop activities except cotton ginning, NAICS code 115114) are defined by the Small Business Administration (SBA) as those having annual receipts of \$30,000,000 or less, and small agricultural producers (other noncitrus fruit farming, NAICS code 111339) are defined as those having annual receipts of \$3,000,000

or less (13 CFR 121.201).

Based on USDA National Agricultural Statistics Service (NASS) data, and given the number of Washington apricot growers, average grower revenue is well below \$3,000,000. NASS's 2020 value of utilized Washington apricot crop production was \$3.866 million. Dividing the \$3.866 million crop value by 315 growers equals average annual receipts per grower of \$12,273. Thus, most Washington apricot growers would be considered small businesses under the SBA definition.

In addition, according to data from USDA's Market News, the estimated Washington apricot 2020 season average Free on Board (f.o.b.) shipper (handler) price per carton was approximately \$31.59 (for Washington apricots, 2-layer tray pack carton, all sizes, June-July 2020, midpoint of the "mostly low" and "mostly high" prices). With a standard Market News weight of 18 pounds per tray pack carton of apricots, the f.o.b. price was approximately \$1.755 per pound (\$31.59 divided by 18 pounds), or \$3,510 per ton. The Committee reported that the industry shipped 1,628 tons for the 2020 season. Total 2020 estimated handler receipts are \$5.714 million (1,628 tons multiplied by \$3,510 per ton). Average annual receipts per handler are approximately \$714,000 (\$5.714 million divided by 8 handlers). Thus, most Washington apricot handlers would be considered small businesses under the SBA definition.

This final rule terminates the Order, and the rules and regulations issued thereunder, and will remove the Order from the Code of Federal Regulations. On July 7, 2021, the Committee made the recommendation to terminate the Order because the Order is no longer necessary to ensure the orderly marketing of apricots. The alternative, to maintain the Order, would require the Committee to increase the assessment rate by approximately 300 percent, from \$2.86 to \$13.30 per ton. However, the 2020-2021 crop production was the smallest crop on record, and evidence suggests that this decline is a continuation of an industry trend.

In addition, the prior suspension of the container and handling regulations, effectuated by a separate rulemaking published on April 5, 2006 (71 FR 16979), has not adversely affected the marketing of Washington apricots in any of the subsequent years. AMS confirmed data from the past 7 years shows that apricots can be marketed from the production area in the absence of the Order's requirements without a negative economic impact on the industry.

Section 922.64(b) of the Order provides that USDA shall terminate or suspend any or all provisions of the Order when a finding is made that the Order does not tend to effectuate the declared policy of the Act. In addition, section 608c(16)(A) of the Act provides that USDA terminate or suspend the operation of any order whenever the order or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act. An additional provision requires that Congress be notified no later than 60 days before the date the Order would be terminated.

After considering the alternative, the Committee concluded that regulating the handling of apricots under the Order is no longer necessary to ensure orderly marketing of Washington apricots. The costs associated with the administration of the Order outweigh the benefits, and that termination of the Order would not have a negative impact on industry. Therefore, the Committee unanimously voted to terminate the Order.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0189 Fruit Crops. After finalizing termination AMS will extract the remaining apricot marketing order-related forms from the forms package during the next three-year renewal process.

This rule effectuates the removal of reporting and recordkeeping requirements on apricot handlers, both small and large. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and

duplication by industry and public sector agencies. In addition, AMS has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The Committee meetings were widely publicized throughout the Washington apricot industry, and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Meetings were held virtually or in a hybrid style with participants having a choice on whether to attend in person or virtually.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A proposed rule inviting comments on the termination of the Order, was published in the **Federal Register** on October 19, 2022 (87 FR 63433). A 60-day comment period was provided to allow interested persons an opportunity to respond to the proposed termination of the Order. In addition, AMS published on its website and distributed to industry stakeholders a notice to trade announcing the proposed termination of the marketing order. One comment was received in support of termination.

Based on the foregoing, and pursuant to 7 U.S.C section 608c(16)(A) of the Act and § 922.64 of the Order, it is hereby found that Federal Marketing Order No. 922 regulating the handling of apricots grown in designated counties in Washington does not tend to effectuate the declared policy of the Act and is therefore terminated.

Following termination, trustees will be appointed to conclude and liquidate the Committee affairs and will continue in that capacity until discharged by USDA. In

addition, pursuant to 7 U.S.C. section 608c(16)(A) of the Act, USDA is required to notify Congress 60 days in advance of termination. Congress was so notified on March 3, 2023.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

PART 922 – [REMOVED]

For the reasons set forth in the preamble, and under the authority of 7 U.S.C 601-674, 7 CFR part 922 is removed.

Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

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